

UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

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GLADYS CORTES,

Case No. 2:14-CV-1235-KJD-VCF

**Plaintiff,**

V.

**REPUBLIC MORTGAGE LLC, et al.,**

ORDER

### Defendants.

14 Before the Court are two motions to dismiss (##4, 5) filed by Defendants Republic  
15 Mortgage LLC and others. These two motions are substantively identical, and were opposed in  
16 the same filing by Plaintiff Cortes (#10). Defendants then replied (#12). Plaintiff brought suit  
17 against Defendants for quiet title and slander of title. Plaintiff asserts that Defendants have no  
18 valid interest in the property.

## I. Legal Standard: Motion to Dismiss

20       A court may dismiss a plaintiff’s complaint for “failure to state a claim upon which relief  
21 can be granted.” Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide “a short and  
22 plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2);  
23 Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). While Rule 8 does not require  
24 detailed factual allegations, it demands more than “labels and conclusions or a formulaic  
25 recitation of the elements of a cause of action.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)  
26 (citations omitted). “Factual allegations must be enough to raise a right to relief above the

1 speculative level.” Twombly, 550 U.S. at 555. Thus, “[t]o survive a motion to dismiss, a  
 2 complaint must contain sufficient factual matter to ‘state a claim for relief that is plausible on its  
 3 face.’” Iqbal, 556 U.S. at 678 (citation omitted).

4 In Iqbal, the Supreme Court clarified the two-step approach district courts are to apply  
 5 when considering motions to dismiss. First, a district court must accept as true all well-pled  
 6 factual allegations in the complaint; however, legal conclusions or mere recitals of the elements  
 7 of a cause of action, supported only by conclusory statements, are not entitled to the assumption  
 8 of truth. Id. at 678. Second, a district court must consider whether the factual allegations in the  
 9 complaint allege a plausible claim for relief. Id. at 679. A claim is facially plausible when the  
 10 plaintiff’s complaint alleges facts that allow the court to draw a reasonable inference that the  
 11 defendant is liable for the alleged misconduct. Id. at 678. Further, where the complaint does not  
 12 permit the court to infer more than the mere possibility of misconduct, the complaint has  
 13 “alleged—but it has not show[n]—that the pleader is entitled to relief.” Id. at 679 (internal  
 14 quotation marks omitted). Thus, when the claims in a complaint have not crossed the line from  
 15 conceivable to plausible, the complaint must be dismissed. Twombly, 550 U.S. at 570.  
 16 Moreover, “[a]ll allegations of material fact in the complaint are taken as true and construed in  
 17 the light most favorable to the non-moving party.” In re Stac Elecs. Sec. Litig., 89 F.3d 1399,  
 18 1403 (9<sup>th</sup> Circ. 1996) (citation omitted).

19 II. Analysis

20 Federal Rule of Civil Procedure 12(b), the basis for dismissal cited by Defendants, refers  
 21 to the failure of a plaintiff’s claims. Unsurprisingly, these claims should supply the  
 22 organizational framework and be the central focus of Defendants’ motion.  
 23 This is not to say that Defendants should have omitted the global theories asserted, but only that  
 24 such arguments are most effective when couched in the context of a specific claim for relief.

25 A. Quiet Title

26 In Nevada, the elements of a quiet title claim are: “(1) the party seeking to have another

1 party's right to property extinguished, must overcome the presumption in favor of the record  
 2 titleholder, and (2) to allege that he has paid any debt owed on the property." Olarte v. DHI  
 3 Mortgage, 2:13-CV-0044-LDG-PAL, 2013 WL 5492694, at \*2 (D. Nev. Sept. 27, 2013).  
 4 Plaintiff has failed to allege that she has paid the debt owed on the property.

5       **B. Slander of Title**

6       In Nevada, the elements of a slander of title claim are: (1) false and malicious  
 7 communications, (2) disparaging to one's title in land, and (3) causing special damage. Higgins  
 8 v. Higgins, 744 P.2d 530, 531 (Nev. 1987). Malice requires proving that "the defendant knew  
 9 that the statement was false or acted in reckless disregard of its truth or falsity." Rowland v.  
 10 Lepire, 662 P.2d 1332, 1335 (Nev. 1983). However, where a defendant has reasonable grounds  
 11 for belief in his claim, there is no malice. Id. at 1135. Plaintiff has failed to allege that  
 12 Defendants' claims were malicious, her strongest statement being that the process through which  
 13 Defendants claim title is "questionable." This is insufficient. Further, it is unclear that Plaintiff  
 14 has sufficiently pled special damages.

15       **C. Injunctive Relief**

16       As correctly noted by Defendants, injunctive relief is simply a specific form of relief, and  
 17 not a claim. As Plaintiff has failed to state claims for which relief may be granted, no relief of  
 18 any type may issue.

19       **III. Additional Matters**

20       **A. Standing**

21       Plaintiff makes the highly unusual argument that Defendants' motions to dismiss should  
 22 be denied because the Defendants lack standing. Plaintiff asserts that Defendants lack standing  
 23 because their interest in the property underlying this matter is "at best questionable." (#10 at 7).  
 24 To the extent that Plaintiff argues that Defendants lack standing to foreclose "foreclosures in  
 25 Nevada are non-judicial, [meaning that] parties initiating foreclosure proceedings are not  
 26 required to prove standing to foreclose in a court of law before initiating the foreclosure

1 process.” Birkland v. Countrywide Home Loans, Inc., 2:11-CV-00502-GMN, 2012 WL 83773  
2 (D. Nev. Jan. 11, 2012). To the extent that Plaintiff argues that Defendants lack standing to move  
3 for dismissal of the action, it is axiomatic that bringing a lawsuit grants a named defendant  
4 standing to challenge the suit.

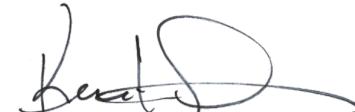
5       **B. The Bankruptcy Proceeding**

6       Both parties try to assert claims of res judicata and other arguments based on the  
7 bankruptcy court proceeding. Such arguments have been insufficiently briefed.

8       **IV. Conclusion**

9       In accordance with the above discussion, Defendants’ two motions to dismiss (##4, 5) are  
10 **HEREBY GRANTED**. However, as it is possible for Plaintiff to remedy the defects of her  
11 complaint, dismissal is without prejudice, and Plaintiff is granted leave to amend the Complaint.

12  
13 DATED this 3rd day of September 2014.



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17       Kent J. Dawson  
18       United States District Judge  
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